

BEFORE THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
COLUMBIA, SOUTH CAROLINA

November 11, 2021

11:00 a.m.

ALLOWABLE EX PARTE BRIEFING - 2021-349-E

Joint Petition of Duke Energy Carolinas, LLC  
and Duke Energy Progress, LLC to Request the  
Commission Hold a Joint Hearing With the North  
Carolina Utilities Commission to Develop  
Carbon Plan

TRANSCRIPT OF ALLOWABLE  
PROCEEDINGS

EX PARTE BRIEFING

COMMISSION MEMBERS PRESENT: Chairman Justin T.  
Williams [A/V], Florence P. Belser, Vice  
Chair, and Commissioners Carolyn L. 'Carolee'  
Williams, Stephen M. 'Mike' Caston [A/V],  
Thomas J. 'Tom' Ervin[A/V], Headen B. Thomas  
[A/V], and Delton W. Powers, Jr. [A/V]

ADVISOR TO COMMISSION:

Jo Anne Wessinger-Hill, Esq.  
General Counsel

APPEARANCES:

FRANK ELLERBE, III, ESQUIRE, together with  
Michael P. Callahan (State President - South  
Carolina, Duke Energy

BENJAMIN P. MUSTIAN, ESQUIRE, representing  
the South Carolina Office of Regulatory Staff

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1                               - - -

2                               P R O C E E D I N G S

3                               - - -

4                   VICE CHAIR BELSER: Good morning, and  
5 welcome to the Public Service Commission. It  
6 is Friday -- what is it? November 19th. This  
7 month is getting away from me -- and we are  
8 here this morning for an allowable ex parte  
9 presentation.

10                   Let's take a roll call of  
11 Commissioners first. Present in the hearing  
12 room is Commissioner Carolee Williams and  
13 Commissioner Belser. Present virtually -- and  
14 that's a long, long way for me to try to  
15 see -- I see Commissioner Ervin and  
16 Commissioner Powers and Commissioner Thomas  
17 and Commissioner Caston. And do we have  
18 Chairman Williams on the phone?

19                   CHAIRMAN WILLIAMS[A/V]: Chairman  
20 Williams is here.

21                   VICE CHAIR BELSER: Thank you.  
22 Ms. Wessinger-Hill, I recognize you to read  
23 the matter before us, please.

24                   MS. WESSINGER-HILL: Thank you, Madam  
25 Chairman. Good morning, Commissioners, and to

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1 all who are present in person and virtually.

2 Today, Friday, November 19th, we are  
3 here in the Commission's hearing room pursuant  
4 to a Notice of Request for an Allowable  
5 Ex Parte Briefing that was filed on behalf of  
6 Duke Energy Carolinas and Duke Energy  
7 Progress. The subject matter to be discussed  
8 at the briefing today is related to Docket  
9 No. 2021-349-E, which is the joint petition of  
10 Duke Energy Carolinas and Duke Energy Progress  
11 to request the Commission hold a joint hearing  
12 with the North Carolina Utilities Commission  
13 to develop a carbon plan.

14 This is a briefing and not a  
15 hearing. The briefing must be conducted in  
16 compliance with the provisions of  
17 South Carolina Code §58-3-260(C).

18 The requirements of that statute are,  
19 in part, that the allowable ex parte be  
20 confined to the subject matter which has been  
21 noticed. In this case, the issue noticed is  
22 the Duke Energy Carolinas and Duke Energy  
23 Progress request of joint proceeding, as  
24 described in the Petition filed in Docket  
25 No. 2021-349-E. I, therefore, ask that the

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1 presenters, Commissioners, and staff all  
2 please refrain from discussing any matters not  
3 related to this specific topic.

4 Secondly, the statute prohibits any  
5 presenter, Commissioner, or Commission staff  
6 from requesting or giving any comment,  
7 predetermination, or prediction regarding any  
8 action by any Commissioner as to any ultimate  
9 decision or otherwise on any issue which is  
10 either or is likely to come before the  
11 Commission.

12 Third, I would ask that all  
13 presenters, Commissioners, and staff further  
14 refrain from referencing any report, article,  
15 statutes or documents of any kind that are not  
16 included in today's presentation by -- on  
17 behalf of Duke. A copy of any document that  
18 may be referenced during the briefing must be  
19 provided to ORS for inclusion in the record  
20 which will be certified by the chief clerk of  
21 the Commission, Ms. Jocelyn Boyd.

22 Finally, everyone in attendance, in  
23 person or virtually, must sign in or have  
24 registered. Everyone in the hearing room or  
25 watching live virtually must also read, sign,

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1 and return the form which you were given at  
2 the door when you came in today or the form  
3 which we e-mailed to you for your virtual  
4 appearance.

5 It is required by law for each  
6 attendee, whether attending virtually or in  
7 person, to certify that the requirements  
8 contained in South Carolina Code §58-3-260(C)  
9 have been complied with at this presentation.

10 Thank you, Madam Chairman. The  
11 Docket is in order.

12 VICE CHAIR BELSER: Thank you,  
13 Ms. Wessinger-Hill. Mr. Mustian from ORS.

14 MR. MUSTIAN: That you, Madam Vice Chair.  
15 My name is Ben Mustian. I am the deputy  
16 general counsel for the Office of Regulatory  
17 Staff, and I'm here today as the designee for  
18 the executive director of ORS and this  
19 allowable ex parte.

20 Many of my comments this morning  
21 will echo what Ms. Wessinger-Hill just stated,  
22 but I believe it bears repeating many of the  
23 things that she has already identified.

24 As the ORS representative, it is my  
25 duty to certify the record of this proceeding

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1 to the chief clerk of the PSC within 72 hours  
2 as to whether or not this briefing was  
3 conducted in compliance with the provisions of  
4 South Carolina Code §58-3-260(C). The  
5 requirements of that statute are, in part,  
6 that the allowable ex parte be confined to the  
7 subject matter which has been noticed, which  
8 in this case the issue noticed was the  
9 Duke Energy Carolinas and Duke Energy Progress  
10 request for a joint proceeding as described in  
11 the petition filed in Docket No. 2021-349-E.

12 Therefore, I would ask that everyone  
13 here please refrain from discussing any  
14 matters not related to Duke Energy's request  
15 for a joint proceeding as described in the  
16 petition.

17 Secondly, the statute prohibits any  
18 participants, Commissioners or Commission  
19 staff from requesting, recommending or giving  
20 any commitment, predetermination, or  
21 prediction regarding any action by any  
22 Commissioner as to any ultimate or penultimate  
23 issue which either is or is likely to come  
24 before the Commission.

25 Third, I would ask the participants,

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Commission, and staff refrain from referencing any reports, articles, statutes or documents of any kind that are not included in today's presentation to prevent the need for myself or Duke Energy's attorneys from having to track down copies or links to these documents to include in record.

Finally, as none of the information contained in the presentation appear to have been marked or requested be granted confidential, I would ask that the presenters refrain from referencing or discussing any materials over which they would like to maintain confidentiality and would ask that the Commissioners please be understanding if the presenters decline to provide such information to the Commission's questions here today.

As a final note, please make sure to read, sign, and return the certified statement form which I understand has been provided to all attendees. I also would ask that each person to please read the form carefully. This form needs to be signed by each attendee in order to certify that the requirements



1 contained in South Carolina Code §58-3-260(C)  
2 have been complied with at the presentation  
3 today. Thank you, Madam Vice Chairman.

4 VICE CHAIR BELSER: Thank you,  
5 Mr. Mustian. Mr. Ellerbe, we recognize you.

6 MR. ELLERBE: Thank you, Madam Chairman.  
7 And we'd first like to say how much we  
8 appreciate the Commission allowing us to make  
9 this briefing. We have -- as reflected in the  
10 comments of Ms. Wessinger-Hill and  
11 Mr. Mustian, we have taken to heart the  
12 admonition that we not make any requests to  
13 this Commission for any commitment,  
14 prediction, or any suggestion of how anybody  
15 is gonna rule on any of the matters that are  
16 covered by our petition, and we understand  
17 that rule and we understand that our asking  
18 for any prediction or commitment would be a  
19 violation of the law; and we also understand  
20 that the Commission giving any -- any  
21 Commissioner giving such a prediction or  
22 commitment would be a violation of law, and  
23 it's the last thing we want to do. We know  
24 there's been some concern expressed about this  
25 briefing, but we intend to make sure that we

1 do everything we can to make sure that there's  
2 no violation of those provisions.

3 The point of the briefing is to give  
4 you the background of why we are -- asked for  
5 the joint proceeding and to talk about how  
6 we -- ideas we have on how we think it could  
7 work.

8 With us -- I'm gonna turn it over to  
9 Mike Callahan shortly to make the bulk of our  
10 presentation, but just for the record, we have  
11 with us Marcus --

12 Is it Preston?

13 MR. PRESTON: Preston.

14 MR. ELLERBE: Marcus Preston. I was  
15 confusing you with a football player I used to  
16 know.

17 Marcus Preston is director of  
18 regulatory affairs, and Heather Shirley Smith,  
19 who's well-known to the Commission in her  
20 former role as the chief regulatory counsel  
21 for South Carolina. And Heather has moved to  
22 a new role. She is vice president regulatory  
23 affairs and policy for South Carolina, and she  
24 now is working closely with Mike Callahan. So  
25 with that introduction, I'll turn it over to

1 Mr. Callahan.

2 VICE CHAIR BELSER: You're on.

3 MR. CALLAHAN: Thank you, Frank, and  
4 thank you, the Chair, and the rest of the  
5 Commission for your time here today.

6 VICE CHAIR BELSER: Mr. Callahan, I'm  
7 sorry to interrupt, but would you pull that  
8 microphone a little bit closer to you?

9 MR. CALLAHAN: Sure.

10 VICE CHAIR BELSER: Sometimes we need you  
11 right in the microphone so folks can --

12 MR. CALLAHAN: This better?

13 VICE CHAIR BELSER: That's much better.  
14 Thank you.

15 MR. CALLAHAN: It's good to be with you  
16 here today. It's been a bit since I've been  
17 here, my last time with the COVID virtual  
18 hearing back in May of 2020, so ...

19 Let me jump right into my  
20 presentation. As you know, we've made an  
21 application with this Commission and the  
22 North Carolina Utilities Commission for a  
23 joint proceeding to address important issues  
24 for our joint system. And where I thought I  
25 would start is with a bit of an overview of

1           this joint system. I don't know if --  
2           there -- perfect. Thank you.

3                     This doesn't appear to be working.

4           VICE CHAIR BELSER: Technical help. The  
5           clicker isn't working. Can we switch that  
6           from the back or do we have another one? Or  
7           where do we need to point it? Let's put it  
8           that way. Towards the screen?

9           MR. CALLAHAN: I can also make some  
10          changes if I need to, so ...

11          VICE CHAIR BELSER: They're bringing  
12          another one. Sorry about that.

13          VIDEO TECHNICIAN: Sorry for the  
14          technical difficulties, Madam Chairman.

15          VICE CHAIR BELSER: Please stand by.  
16          We're having a little bit of a technical issue  
17          here for everybody virtually. We're at ease  
18          for just a second.

19                     There we go. Something moved.  
20          They're bringing you a clicker, Mr. Callahan.

21          MR. CALLAHAN: Perfect.

22          VICE CHAIR BELSER: Where does he need to  
23          point that, please?

24          VIDEO TECHNICIAN: (Inaudible.)

25          VICE CHAIR BELSER: Okay. Thank you.

1 VIDEO TECHNICIAN: Perfect.

2 VICE CHAIR BELSER: Thank you for your  
3 patience.

4 MR. CALLAHAN: Absolutely. As I  
5 mentioned, where I thought I would start is  
6 with a bit of an overview of our joint system.

7 As you can see by this slide, when  
8 taking our Duke Energy Carolinas and  
9 Duke Energy Progress utilities together, our  
10 joint system serves 56,000 square miles across  
11 the Carolinas. This represents about  
12 4 million customers in both states.

13 Consistent with longstanding  
14 practice, the cost to serve those customers  
15 are shared between South Carolina and  
16 North Carolina with our generation and  
17 transmission facilities allocated between our  
18 retail customers in both states as well as our  
19 wholesale customers.

20 As we noted in our petition, the  
21 Commission has recently approved an allocation  
22 of system costs for Duke Energy Carolinas with  
23 approximately 68 percent to North Carolina  
24 retail, 24 percent to South Carolina retail,  
25 and 8 percent to wholesale customers.

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1                   For Duke Energy Progress, those  
2                   allocation of system costs are approximately  
3                   61 percent to North Carolina retail,  
4                   10 percent to South Carolina retail, and  
5                   29 percent to wholesale customers.

6                   For decades, that's how our system  
7                   has grown, been operated, and been paid for.  
8                   I think this is a critical point. The way our  
9                   system has been designed has long reflected  
10                  the fact that we operate as a joint system  
11                  across South Carolina and North Carolina. In  
12                  truth, our generation and transmission network  
13                  would never have been designed this way if not  
14                  for the longstanding cooperation of both  
15                  states to support this joint system.

16                  I thought I would give you some  
17                  examples where I think this partnership has  
18                  been notable.

19                  First, I think about our Robinson  
20                  Nuclear Facility in Darlington County. Given  
21                  the system cost allocations I just mentioned,  
22                  with 10 percent of costs allocated to  
23                  South Carolina retail customers, I think it is  
24                  safe to say that Duke Energy Progress would  
25                  never have built this nuclear facility in

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1 South Carolina had there not been assurance  
2 that both states would pay their share of the  
3 costs of that facility. I think about the  
4 engineering marvel in Oconee County where you  
5 have a three-unit nuclear site, the largest on  
6 our system serving our Duke Energy Carolinas'  
7 customers across both states. But it's not  
8 just a nuclear site in Oconee County. As you  
9 know, we were also able to couple this nuclear  
10 plant with our Bad Creek Pump Storage Hydro  
11 Facility taking advantage of the geography in  
12 the Upstate to build one of the largest  
13 storage facilities in the world, and with it,  
14 a treasure in Lake Jocassee.

15 Again, had Duke Energy Carolinas  
16 been a standalone utility in South Carolina,  
17 it is doubtful we could have undertaken a  
18 project of this magnitude. But with the  
19 support of both states, we made this a  
20 reality, and our customers in both states have  
21 benefited greatly from the carbon-free,  
22 affordable and reliable power this system  
23 provides 24/7.

24 Finally, I think about the  
25 nuclear -- or the number of coal plants we

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1 have located in North Carolina. Given factors  
2 such as favorable access to railroads, and  
3 with it, access to low-cost coal supply, these  
4 plants have been instrumental in helping us  
5 keep our customer rates well below the  
6 national average.

7 So, again, I'd just like to really  
8 underscore that these utilities and their  
9 generation and transmission systems have been  
10 built, operated, and paid for collaboratively  
11 as a joint system operating across state lines  
12 for decades.

13 I thought I would turn for a moment  
14 to Duke Energy in South Carolina. When I  
15 think about our roots as a company, what comes  
16 to mind for me is how three visionaries came  
17 together to harness the power of the  
18 Catawba River in the state. You may know that  
19 the first power plant of that company was  
20 right here in South Carolina up the road in  
21 York County, and two of those three  
22 visionaries were native South Carolinians,  
23 including Dr. Gill Wylie, and William States  
24 Lee, a Citadel grad. And soon after, we began  
25 serving customers in mill villages and small



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1 farming towns across the state providing power  
2 to the burgeoning economy of the region.  
3 Today, that means we serve around 800,000  
4 customers across 30 counties in  
5 South Carolina.

6 I can't talk about our operations in  
7 South Carolina without mentioning our proud  
8 nuclear history and some of the best run  
9 plants in the world located right here in  
10 South Carolina. We operate six units at our  
11 Oconee, Robinson, and Catawba nuclear sites.  
12 To put this in perspective, that's over half  
13 the 11 nuclear units we operate over the  
14 entire system in South Carolina and  
15 North Carolina.

16 Again, I think this reflects the  
17 collaborative planning that has taken place  
18 across the Carolinas.

19 Of course, with significant  
20 infrastructure like this, we have thousands of  
21 employees and retirees in the state, and we  
22 are a significant contributor to property tax  
23 base in South Carolina with payments totaling  
24 \$177 million annually.

25 As we engage with our customers and

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other stakeholders, I'm reminded that all this takes place in someone's backyard. That's true whether we are hardening the electric grid against extreme weather or cyber threats, extreme ways to grow renewable energy options for our customers, or simply volunteering at community events. We are proud to have helped grow the economy of South Carolina for over a century and have done so through significant business recruitment and retention efforts, efforts which have had a significant impact on this region and, in fact, across this state. The Palmetto State has been important to us literally from the inception of the company and remains so today.

As I mentioned, we have a long history of business recruitment. The very nature of the reliable affordable power we provide has helped attract major industry to our region. In 2020 alone, Duke Energy helped recruit more than \$640 million in capital investment and more than 1200 new jobs to this state. A humbling statistic for me is that the total economic impact of Duke Energy in South Carolina totals approximately

\$7.6 billion annually. And while South Carolina is increasingly an advanced manufacturing state, with industries that need reliable power and competitive energy prices, one notable trend is that many, if not most of these companies, now have aggressive sustainability and carbon reduction goals of their own.

Things are evolving at the fastest rate I've seen in my nearly 20 years at the company. This includes customers and industries demanding more from us when it comes to the energy mix they rely upon to power the hundreds of thousands of jobs they create.

As you've heard from us before, Duke Energy is committed to a clean, reliable energy transition for the Carolinas, and this includes carbon reduction. This is what utilities generally mean when they refer to the energy transition: Transitioning to meaningful carbon reduction in the near term and achieving net zero carbon emissions by 2050.

When you look around at

1 investor-owned utilities across the country,  
2 you'll see the carbon reduction goals are not  
3 unique to Duke Energy. You'll see this across  
4 the sector with our neighboring utilities like  
5 Southern Company and our peers in the state  
6 like Dominion Energy, and you'll see it with  
7 other utilities such as Xcel Energy and AEP.

8 As we think about this for the  
9 Carolinas, we've already retired approximately  
10 6,000 megawatts of coal between 2011 and 2018.  
11 As you know, we no longer operate any coal  
12 units in South Carolina, and we are seeing  
13 more renewables with 4200 megawatts of solar  
14 now on our system. These actions give us a  
15 great head start when we think about carbon  
16 reduction. In fact, we've already seen a  
17 reduction of over 40 percent in the Carolinas.

18 As we continue to make this  
19 transition, we'll also continue to evaluate  
20 options that balance affordability and  
21 reliability, options including solar, wind,  
22 storage, emerging technologies like advanced  
23 nuclear and hydrogen to name a few. And  
24 something that is not on the slide but is  
25 another alternative that we certainly seek to

continue to grow is energy efficiency as a  
portion of that mix.

One thing I really want to emphasize  
is why the energy transition is so important  
to utilities like Duke Energy, and there are  
several macro-factors at play here. First, we  
hear from our customers that they want to see  
us continue to take carbon out of our  
business. That's true whether you're talking  
about individual customers, and it's also true  
for many of the businesses we serve that have  
their own sustainability goals.

Second, it's important to continue  
attracting funding at reasonable rates for our  
customers. As you know, we operate a very  
capital-intensive business to provide the  
service our customers expect of us. Whether  
connecting new customers, responding quickly  
to outages from storms, or maintaining our  
system to ensure it meets the reliability  
requirements our customers demand, all of this  
takes significant capital investment.

It's now mainstream that investors  
choose where to invest their money with  
environmental, social, and governance or ESG

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1 issues, top of mind. That's true whether  
2 you're talking about those who invest in our  
3 equity or whether you're talking about debt  
4 investors who lend us money and the rating  
5 agencies upon which many of these investors  
6 base their investment decisions.

7 There are several other factors  
8 delineated on this slide that also contribute  
9 to the need to reduce carbon in the Carolinas.

10 One more I'd like to mention is the  
11 importance of ensuring a resilient system that  
12 takes into account fuel security, including  
13 the continued reliability of coal for fuel  
14 supply.

15 As you've heard in some of our fuel  
16 proceedings, the coal markets are distressed  
17 with increased volatility and uncertainty.  
18 Coal suppliers are reviewing their own  
19 business models as they consider ways to be  
20 less dependent on coal-related transportation,  
21 and their financial health has been weakened  
22 as they, too, face issues with access to  
23 investor financing as a result of ESG  
24 pressures.

25 So as we think about the Carolinas,

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1 factors like those I have mentioned will all  
2 be important as we consider our carbon  
3 reduction goals.

4 I'm happy to report that the good  
5 news is we have a framework for the energy  
6 transition with the recent passage of House  
7 Bill 951, or HB951, in North Carolina. HB951  
8 represents bipartisan policy to reduce carbon  
9 emissions, 70 percent by 2030 and net zero by  
10 2050, consistent with our own stated carbon  
11 goals and putting us on a path to cleaner  
12 energy while prioritizing affordable prices  
13 and reliable power.

14 This legislation had overwhelmingly  
15 bipartisan support from our Republican-led  
16 legislature and a Democratic governor.  
17 Moreover, as you see on the bottom of this  
18 slide, these goals are generally consistent  
19 with what we put forth in our preferred  
20 scenario filed with this Commission in our  
21 Modified IRP. We believe those goals have  
22 been well received today with the preferred  
23 scenario in our Modified IRP showing a path to  
24 achieve 66 percent carbon reduction by 2030.  
25 HB95 is very close to that with a target of

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1           70 percent over a similar time frame.

2                       So I'd just highlight again that our  
3 goals at Duke Energy are consistent with what  
4 our customers expect, and that's to provide  
5 affordable, reliable, and increasingly clean  
6 energy to all Carolinians.

7                       Let me briefly talk about some of  
8 the key aspects of HB951. HB951 represents  
9 comprehensive energy legislation that  
10 addressed a number of policy issues that were  
11 being discussed in the state of  
12 North Carolina, several of which I'm not going  
13 to discuss today.

14                      Where I'd like to focus my time is  
15 on what's important to South Carolina, and  
16 that's really the light blue block that you  
17 see on the lower left-hand portion of this  
18 slide. This covers the development of a  
19 carbon plan to effectuate carbon reduction.  
20 As I mentioned, HB951 represents bipartisan  
21 policy to reduce carbon emissions, 70 percent  
22 by 2030 and net zero by 2050.

23                      In developing a carbon plan to  
24 achieve these reductions, the legislation was  
25 clear that regulators must do this in a



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1 least-cost manner and use reliability  
2 requirements to protect customers. This  
3 balance will allow the Carolinas to maintain  
4 the competitive advantage that we've enjoyed  
5 as a region that maintains and remains a  
6 national leader in clean energy with thousands  
7 of Carolinas jobs and economic growth  
8 potential.

9 Now that these carbon reduction  
10 goals have become law, the North Carolina  
11 Utilities Commission must undertake its review  
12 of a carbon plan, but it must do so while  
13 considering input from stakeholders.

14 Let me stress that the legislation  
15 mandates that the carbon plan is to be  
16 developed with stakeholder input. That's why  
17 we've asked the Public Service Commission of  
18 South Carolina to jointly hear the carbon plan  
19 given that our generation serves both states.  
20 And while I don't know today exactly what that  
21 carbon plan will entail, I do know one of the  
22 biggest questions that utilities like  
23 Duke Energy will continue to face is how we  
24 replace our coal generation. This will  
25 require diverse and balanced energy mix,

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1 including the evaluation of new and emerging  
2 technologies. And again, HB951 makes clear  
3 that replacement generation of our coal plants  
4 must be least-cost and owned and operated by  
5 the utility.

6 HB951 also allows for considerable  
7 new solar to be vetted through a regulatory  
8 process with a 55/45 percent ownership split.  
9 That means significant opportunities for solar  
10 developers in both states with all solar  
11 continuing to be competitively procured.

12 As I close, I want to underscore  
13 that what we are trying to accomplish is a  
14 joint proceeding that recognizes the  
15 importance of our joint system. As I  
16 mentioned in the beginning of my presentation,  
17 we have operated as a joint system for  
18 decades, and part of that has been the  
19 well-established practice of jointly planning  
20 our generation and transmission needs to  
21 ensure alignment to the benefit of our  
22 customers in both states.

23 In addition to a joint proceeding,  
24 we want to recognize that carbon reduction is  
25 a reasonable planning assumption whether it's

1 codified in HB951 or not. As a result, it  
2 makes sense that both states opine on a carbon  
3 plan, and I think it's important that we  
4 recognize that this plan does not exist today.  
5 We won't propose a plan until we have  
6 stakeholder engagement on what that plan  
7 should look like. Once proposed and filed, we  
8 want both Commissions to hear from  
9 stakeholders who depend on our joint system in  
10 both states.

11 We're asking for South Carolina to  
12 take a seat at the table, for our voice to be  
13 heard, to help determine the future for our  
14 operations in the Carolinas. We certainly  
15 hope others support our request asking this  
16 Commission to use its authority under  
17 South Carolina law to seek to join the  
18 proceedings in North Carolina with a deadline  
19 for the North Carolina Utilities Commission to  
20 rule on a carbon plan by the end of 2022.  
21 Time is of the essence.

22 I know my attorney has some  
23 specifics on how a joint proceeding could  
24 work, so let me turn it over to Mr. Ellerbe to  
25 walk through some of the mechanics, and I'll

1 try to advance the slide for you.

2 VICE CHAIR BELSER: Thank you,  
3 Mr. Callahan. Mr. Ellerbe?

4 MR. ELLERBE: Thank you, Madam Chair.  
5 This last slide -- and I only had one slide,  
6 but it's rather dense. And these are  
7 proposals that we make to y'all for your  
8 consideration as you think about having a  
9 joint proceeding.

10 The statute that we are asking the  
11 Commission to exercise its authority under is  
12 58-27-170. It was passed in 1932. To our  
13 knowledge, it has never been used by the South  
14 Carolina Commission, but it clearly applies to  
15 a situation like the one that Mike just  
16 described for y'all.

17 This is -- this is a situation where  
18 a joint hearing by the two regulatory  
19 Commissions of matters that affect both states  
20 makes all the sense in the world and  
21 underscores the wisdom of our General Assembly  
22 almost a hundred years ago in providing that  
23 that could happen.

24 So here's -- here's how we -- how  
25 we've given thought, and we've talked to

1 people and heard issues or questions from  
2 various folks leading up to filing the  
3 petition. We think that, first of all, both  
4 Commissions would maintain separate electronic  
5 dockets. All filings in the joint proceeding  
6 would be made -- would be made in both  
7 electronic dockets. That would allow people  
8 who are used to the South Carolina system to  
9 see everything on the DMS. Same thing for  
10 North Carolina.

11 We believe that, and of course Duke  
12 has engaged -- does every day engage in  
13 producing materials in discovery in both  
14 states -- the Company believes that the  
15 discovery procedures are very similar in both  
16 states; that consolidating discovery and  
17 exchange of information will be a reasonable,  
18 seamless, more efficient for the parties and  
19 will not cause any -- will not cause any  
20 difficulties.

21 We believe that and have agreed to,  
22 or are ready to agree if the joint proceeding  
23 goes forward, that ORS's audit rights under  
24 58-4-55, which applies to the way that ORS  
25 gets material information from the companies,

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1           that that would apply in the joint proceeding.  
2           The companies would agree to that, and that  
3           would allow ORS to use the tools that are at  
4           its disposal.

5                     The prefiling of testimony, the two  
6           Commissions for contested case hearings have  
7           similar approaches on prefiling of testimony,  
8           so that would be something that would be,  
9           again, familiar to both Commissions and could  
10          operate, we think, without much difficulty.

11                    We believe that once the two  
12          Commissions decide -- assuming that the two  
13          Commissions decide to have a joint proceeding,  
14          as we have proposed -- and our petition  
15          describes the North Carolina provisions of law  
16          that we think apply here -- but once both  
17          Commissions make a decision, yes, we want to  
18          have a joint proceeding, we think that the --  
19          it is a reasonable interpretation of  
20          South Carolina's allowable ex parte -- well,  
21          South Carolina's provisions on communications  
22          and restrictions on communications. A  
23          reasonable interpretation is that you've got a  
24          statute that allows for joint proceeding,  
25          you've got a statutory provision that allows

Commissioners to talk to each other, yet there's a specific exemption in our statute that allows Commissioners to consult with each other and with your staff, and we believe that it is a reasonable interpretation that if you have a joint proceeding, which is authorized under a different statute, the Commissioners of the two Commissions can consult with each other consistent with the South Carolina restrictions on communications.

We are planning on in our -- when we file our comments, we'll brief that and give you the -- a legal argument, but we think that that would be a reasonable interpretation, and we think that this Commission -- if this Commission adopted that interpretation, that any courts looking at it would give deference to the Commission's interpretation.

Our idea and our proposal is that the hearing, the testimony, the evidence being presented would be held before both Commissions. Both Commissions would be sitting. We do not know -- we think y'all working with the North Carolina Commission and staff should determine how -- the logistics of

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that, whether it should be done in part  
 virtually, whether you try to get both  
 Commissions together, or some combination, but  
 we think it can be done.

The last two years have shown  
 everybody that virtual hearings can be  
 conducted. We've gotten better at it, I'm  
 told, and still maybe a few wrinkles to work  
 out, but we think that can work. We think  
 that helps a lot, and that had something to do  
 with our thought that y'all would favorably  
 entertain a request is that you've now got  
 experience with having a virtual hearing.

We believe that because 951 requires  
 the North Carolina Commission to adopt a  
 carbon plan by December '22, we think the  
 chair of the North Carolina Commission should  
 preside would be our suggestion. They have a  
 statutory mandate to take certain action in a  
 certain time frame, similar to what y'all have  
 had to do coming out of Act 62, so we think  
 that it makes sense for -- but somebody's got  
 to chair the proceeding. Somebody has to be  
 the chair, so we think, for your  
 consideration, that that probably should be



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1 the chair of the North Carolina Utility  
2 Commission.

3 This is very important, and there's  
4 been some confusion about it as we talk to  
5 folks. We do not think that in the joint  
6 proceeding the two Commissions will vote  
7 together on a joint order. Instead, our idea  
8 is that we have a joint proceeding, develop a  
9 joint record. The North Carolina Commission  
10 would meet its statutory obligation to approve  
11 the carbon plan by December 22nd, and then  
12 what we are -- as described in our petition,  
13 what we are hoping this Commission will do is  
14 follow that with briefing South Carolina only  
15 briefing or comments, and then based on that  
16 record, would make a decision to, in effect,  
17 endorse the carbon plan by permitting,  
18 allowing, instructing the two Duke companies  
19 to use the carbon plan in our next IRP filings  
20 which we are proposing be done in 2023 which  
21 is permissible/allowed under Act -- in the  
22 provisions of Act 62.

23 So that's really important. The  
24 Commissions will retain full authority to deal  
25 with what is before each Commission. There

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1       won't be any en banc decision by a combined --  
2       a combination of the two Commissions. And we  
3       absolutely believe that what we're describing  
4       can be done without eroding the authority or  
5       the jurisdiction of either Commission.

6               As Mike described, these are -- the  
7       issues presented by the passage of Act 951 are  
8       really important to both states; really  
9       important to people in South Carolina. If  
10      we're gonna keep the states aligned, as has  
11      been the case, we think that a joint  
12      proceeding is a great way to do that.

13             Thank you for your attention, and we  
14      will be happy to answer any questions that  
15      y'all have.

16             VICE CHAIR BELSER: Thank you,  
17      Mr. Ellerbe, Mr. Callahan. I appreciate your  
18      presentations this morning.

19             Commissioners, is there any  
20      questions for Mr. Callahan or Mr. Ellerbe?

21             Hearing none, again, I thank you for  
22      coming quickly to describe this petition that  
23      was filed, and we appreciate your presence  
24      today. ORS, we appreciate y'all's attendance  
25      and your work to make this ex -- allowable

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ex parte presentation possible.

And with that, we will close this  
allowable ex parte presentation. Thank you  
very much.

MR. CALLAHAN: Thank you for your time.


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(Allowable Ex Parte Briefing concluded at 11:43 a.m.)

C E R T I F I C A T E

I, Tami I. Watters, CSR, do hereby  
 certify that the foregoing is, to the best of my  
 skill and ability, a true and correct transcript of  
 all the proceedings had in an Allowable Ex Parte  
 Proceeding held before THE PUBLIC SERVICE  
 COMMISSION OF SOUTH CAROLINA in Columbia, South  
 Carolina, according to my verbatim record of same.

IN WITNESS WHEREOF, I have hereunto set  
 my hand, on this 19th day of November, 2021.

  
 Tami I. Watters, CSR  
 Registered Professional Reporter  
 Notary Public  
 State of South Carolina at Large  
 My Commission expires:  
 February 11, 2029